

1-1 By: Ritter, et al. (Senate Sponsor - Fraser) H.B. No. 730
1-2 (In the Senate - Received from the House April 29, 2003;
1-3 April 30, 2003, read first time and referred to Committee on
1-4 Business and Commerce; May 22, 2003, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 7, Nays
1-6 2; May 22, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 730 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to residential construction, including certain
1-11 warranties, building and performance standards, and dispute
1-12 resolution; providing an administrative penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 ARTICLE 1. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION;

1-15 STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION; WARRANTIES AND
1-16 BUILDING AND PERFORMANCE STANDARDS

1-17 SECTION 1.01. The Property Code is amended by adding Title
1-18 16 to read as follows:

1-19 TITLE 16. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION ACT

1-20 SUBTITLE A. GENERAL PROVISIONS

1-21 CHAPTER 401. GENERAL PROVISIONS

1-22 Sec. 401.001. SHORT TITLE. This title may be cited as the
1-23 Texas Residential Construction Commission Act.

1-24 Sec. 401.002. GENERAL DEFINITIONS. In this title:

1-25 (1) "Applicable building and performance standards"
1-26 means:

1-27 (A) building and performance standards adopted
1-28 under Section 430.001; or

1-29 (B) for homes constructed before the adoption of
1-30 building and performance standards under Section 430.001, the
1-31 building and performance standards under any express warranty
1-32 provided in writing by the builder or, if there is no express
1-33 warranty, the usual and customary residential construction
1-34 practices in effect at the time of the construction.

1-35 (2) "Applicable warranty period" means:

1-36 (A) a warranty period established under Section
1-37 430.001; or

1-38 (B) for construction to which the warranty
1-39 periods adopted under Section 430.001 do not apply, any other
1-40 construction warranty period that applies to the construction.

1-41 (3) "Approved architect" means an architect licensed
1-42 by this state and approved by the commission to provide services to
1-43 the commission in connection with the state-sponsored inspection
1-44 and dispute resolution process.

1-45 (4) "Approved structural engineer" means a licensed
1-46 professional engineer approved by the commission to provide
1-47 services to the commission in connection with the state-sponsored
1-48 inspection and dispute resolution process.

1-49 (5) "Commission" means the Texas Residential
1-50 Construction Commission.

1-51 (6) "Home" means the real property and improvements
1-52 and appurtenances for a single-family house or duplex.

1-53 (7) "Homeowner" means a person who owns a home or a
1-54 subrogee or assignee of a person who owns a home.

1-55 (8) "Limited statutory warranty and building and
1-56 performance standards" means the limited statutory warranty and
1-57 building and performance standards adopted by the commission under
1-58 Section 430.001.

1-59 (9) "Nonstructural matter" has the meaning assigned by
1-60 the limited statutory warranty and building and performance
1-61 standards adopted by the commission under Section 430.001.

1-62 (10) "Request" means a request submitted under Section
1-63 428.001.

2-1 (11) "State inspector" means a person employed by the
2-2 commission under Section 427.002.
2-3 (12) "State-sponsored inspection and dispute
2-4 resolution process" means the process by which the commission
2-5 resolves a request.
2-6 (13) "Structural" means the load-bearing portion of a
2-7 home.
2-8 (14) "Structural failure" has the meaning assigned by
2-9 the limited statutory warranty and building and performance
2-10 standards adopted by the commission under Section 430.001.
2-11 (15) "Third-party inspector" means a person appointed
2-12 by the commission under Section 428.003.
2-13 Sec. 401.003. DEFINITION OF BUILDER. (a) In this title,
2-14 "builder" means any business entity or individual who, for a fixed
2-15 price, commission, fee, wage, or other compensation, constructs or
2-16 supervises or manages the construction of:
2-17 (1) a new home;
2-18 (2) a material improvement to a home, including the
2-19 roof of an existing home; or
2-20 (3) an improvement to the interior of an existing home
2-21 when the cost of the work exceeds \$10,000.
2-22 (b) The term includes:
2-23 (1) an owner, officer, director, shareholder,
2-24 partner, affiliate, or employee of the builder;
2-25 (2) a risk retention group governed by Article 21.54,
2-26 Insurance Code, that insures all or any part of a builder's
2-27 liability for the cost to repair a residential construction defect;
2-28 and
2-29 (3) a third-party warranty company and its
2-30 administrator.
2-31 (c) The term does not include any business entity or
2-32 individual who has been issued a license by this state or an agency
2-33 or political subdivision of this state to practice a trade or
2-34 profession related to or affiliated with residential construction
2-35 if the work being done by the entity or individual to the home is
2-36 solely for the purpose for which the license was issued.
2-37 Sec. 401.004. DEFINITION OF CONSTRUCTION DEFECT. (a) In
2-38 this title, "construction defect" means:
2-39 (1) the failure of the design, construction, or repair
2-40 of a home, an alteration of or a repair, addition, or improvement to
2-41 an existing home, or an appurtenance to a home to meet the
2-42 applicable warranty and building and performance standards during
2-43 the applicable warranty period; and
2-44 (2) any physical damage to the home, an appurtenance
2-45 to the home, or real property on which the home or appurtenance is
2-46 affixed that is proximately caused by that failure.
2-47 (b) The term does not include a defect that arises or any
2-48 damages that arise wholly or partly from:
2-49 (1) the negligence of a person other than the builder
2-50 or an agent, employee, subcontractor, or supplier of the builder;
2-51 (2) failure of a person other than the builder or an
2-52 agent, employee, subcontractor, or supplier of the builder to:
2-53 (A) take reasonable action to mitigate any
2-54 damages that arise from a defect; or
2-55 (B) take reasonable action to maintain the home;
2-56 (3) normal wear, tear, or deterioration; or
2-57 (4) normal shrinkage due to drying or settlement of
2-58 construction components within the tolerance of building and
2-59 performance standards.
2-60 Sec. 401.005. EXEMPTIONS. (a) This title does not apply to
2-61 a home that is:
2-62 (1) built by the individual who owns the home, alone or
2-63 with the assistance of the individual's employees or independent
2-64 contractors; and
2-65 (2) used by the individual as the individual's primary
2-66 residence for at least one year after the completion or substantial
2-67 completion of construction of the home.
2-68 (b) This title does not apply to a homeowner or to a
2-69 homeowner's real estate broker, agent, or property manager who

3-1 supervises or arranges for the construction of an improvement to a
3-2 home owned by the homeowner.

3-3 Sec. 401.006. SUNSET PROVISION. The Texas Residential
3-4 Construction Commission is subject to Chapter 325, Government Code
3-5 (Texas Sunset Act). Unless continued in existence as provided by
3-6 that chapter, the commission is abolished and this title expires
3-7 September 1, 2009.

3-8 [Chapters 402-405 reserved for expansion]

3-9 SUBTITLE B. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

3-10 CHAPTER 406. COMMISSION

3-11 Sec. 406.001. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION;
3-12 MEMBERSHIP. (a) The Texas Residential Construction Commission
3-13 consists of nine members appointed by the governor with the advice
3-14 and consent of the senate as follows:

3-15 (1) four members must be builders who each hold a
3-16 certificate of registration under Chapter 416;

3-17 (2) three members must be representatives of the
3-18 general public;

3-19 (3) one member must be a licensed professional
3-20 engineer who practices in the area of residential construction; and

3-21 (4) one member must be a licensed architect who
3-22 practices in the area of residential construction.

3-23 (b) Appointments to the commission shall be made without
3-24 regard to the race, color, disability, sex, religion, age, or
3-25 national origin of the appointees.

3-26 Sec. 406.002. TERMS. (a) Commission members serve
3-27 staggered six-year terms, with three members' terms expiring
3-28 February 1 of each odd-numbered year. The terms of three of the
3-29 builder representatives must expire in different odd-numbered
3-30 years. The term of one of the representatives of the general public
3-31 must expire in each odd-numbered year.

3-32 (b) A member of the commission may not serve more than two
3-33 complete terms.

3-34 Sec. 406.003. PRESIDING OFFICER. The governor shall
3-35 designate a member of the commission as the presiding officer of the
3-36 commission to serve in that capacity at the pleasure of the
3-37 governor. At a regular meeting in February of each year, the
3-38 commission shall elect from its membership a vice presiding officer
3-39 and a secretary.

3-40 Sec. 406.004. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
3-41 In this section, "Texas trade association" means a cooperative and
3-42 voluntarily joined association of business or professional
3-43 competitors in this state designed to assist its members and their
3-44 industry or profession as a whole in dealing with mutual business or
3-45 professional problems, issues, and circumstances and in promoting
3-46 the common interest of its members and their industry and
3-47 profession as a whole.

3-48 (b) A person may not be a member of the commission and may
3-49 not be a commission employee employed in a "bona fide executive,
3-50 administrative, or professional capacity," as that phrase is used
3-51 for purposes of establishing an exemption to the overtime
3-52 provisions of the federal Fair Labor Standards Act of 1938 (29
3-53 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

3-54 (1) the person is an employee or paid consultant of a
3-55 Texas trade association in the field of residential construction;
3-56 or

3-57 (2) the person's spouse is a manager or paid consultant
3-58 of a Texas trade association in the field of residential
3-59 construction.

3-60 (c) A person may not be a member of the commission or act as
3-61 the general counsel to the commission if the person is required to
3-62 register as a lobbyist under Chapter 305, Government Code, because
3-63 of the person's activities for compensation on behalf of a
3-64 profession related to the operation of the commission.

3-65 (d) A person may not be a commission employee described by
3-66 Subsection (b) if the person is an employee or agent in the field of
3-67 residential construction. This subsection does not apply to a
3-68 person appointed to the commission.

3-69 Sec. 406.005. GROUNDS FOR REMOVAL. (a) It is a ground for

4-1 removal from the commission that a member:
 4-2 (1) does not have at the time of taking office the
 4-3 qualifications required by Section 406.001;
 4-4 (2) does not maintain during service on the commission
 4-5 the qualifications required by Section 406.001;
 4-6 (3) is ineligible for membership under Section
 4-7 406.004;
 4-8 (4) cannot because of illness or disability discharge
 4-9 the member's duties for a substantial part of the member's term; or
 4-10 (5) is absent from more than half of the regularly
 4-11 scheduled commission meetings that the member is eligible to attend
 4-12 during a calendar year without an excuse approved by a majority vote
 4-13 of the commission.

4-14 (b) The validity of an action of the commission is not
 4-15 affected by the fact that it is taken when a ground for removal of a
 4-16 commission member exists.

4-17 (c) If the executive director has knowledge that a potential
 4-18 ground for removal exists, the executive director shall notify the
 4-19 presiding officer of the potential ground. The presiding officer
 4-20 shall then notify the governor and the attorney general that a
 4-21 potential ground for removal exists. If the potential ground for
 4-22 removal involves the presiding officer, the executive director
 4-23 shall notify the next highest ranking officer of the commission,
 4-24 who shall notify the governor and the attorney general that a
 4-25 potential ground for removal exists.

4-26 Sec. 406.006. TRAINING. (a) A person who is appointed to
 4-27 and qualifies for office as a member of the commission may not vote,
 4-28 deliberate, or be counted as a member in attendance at a meeting of
 4-29 the commission until the person completes a training program that
 4-30 complies with this section.

4-31 (b) The training program must provide the person with
 4-32 information regarding:

4-33 (1) the legislation that created the commission;
 4-34 (2) the programs operated by the commission;
 4-35 (3) the role and functions of the commission;
 4-36 (4) the rules of the commission, with an emphasis on
 4-37 the rules that relate to disciplinary and investigatory authority;
 4-38 (5) the current budget for the commission;
 4-39 (6) the results of the most recent formal audit of the
 4-40 commission;

4-41 (7) the requirements of:
 4-42 (A) the open meetings law, Chapter 551,
 4-43 Government Code;
 4-44 (B) the public information law, Chapter 552,
 4-45 Government Code;
 4-46 (C) the administrative procedure law, Chapter
 4-47 2001, Government Code; and
 4-48 (D) other laws relating to public officials,
 4-49 including conflict-of-interest laws; and
 4-50 (8) any applicable ethics policies adopted by the
 4-51 commission or the Texas Ethics Commission.

4-52 (c) A person appointed to the commission is entitled to
 4-53 reimbursement, as provided by the General Appropriations Act, for
 4-54 the travel expenses incurred in attending the training program
 4-55 regardless of whether the attendance at the program occurs before
 4-56 or after the person qualifies for office.

4-57 Sec. 406.007. MEETINGS. The commission shall meet at least
 4-58 quarterly and at other times at the call of the presiding officer.

4-59 CHAPTER 407. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

4-60 Sec. 407.001. EXECUTIVE DIRECTOR. The commission shall
 4-61 employ an executive director as the executive head of the agency.

4-62 Sec. 407.002. OTHER PERSONNEL. The commission may employ
 4-63 other personnel as necessary for the administration of this title.

4-64 Sec. 407.003. DIVISION OF RESPONSIBILITIES. The commission
 4-65 shall develop and implement policies that clearly separate the
 4-66 policy-making responsibilities of the commission and the
 4-67 management responsibilities of the executive director and the staff
 4-68 of the commission.

4-69 Sec. 407.004. QUALIFICATIONS AND STANDARDS OF CONDUCT

5-1 INFORMATION. The executive director or the executive director's
 5-2 designee shall provide to members of the commission and to
 5-3 commission employees, as often as necessary, information regarding
 5-4 the requirements for office or employment under this title,
 5-5 including information regarding a person's responsibilities under
 5-6 applicable laws relating to standards of conduct for state officers
 5-7 or employees.

5-8 Sec. 407.005. CAREER LADDER PROGRAM; PERFORMANCE
 5-9 EVALUATION. (a) The executive director or the executive
 5-10 director's designee shall develop an intra-agency career ladder
 5-11 program that addresses opportunities for mobility and advancement
 5-12 for employees within the commission. The program must require
 5-13 intra-agency posting of all nonentry level positions concurrently
 5-14 with any public posting.

5-15 (b) The executive director or the executive director's
 5-16 designee shall develop a system of annual performance evaluations
 5-17 based on measurable job tasks. All merit pay for commission
 5-18 employees must be based on the system established under this
 5-19 subsection.

5-20 Sec. 407.006. EQUAL EMPLOYMENT OPPORTUNITY POLICY; ANNUAL
 5-21 REPORT. (a) The executive director or the executive director's
 5-22 designee shall prepare and maintain a written policy statement that
 5-23 implements a program of equal employment opportunity to ensure that
 5-24 all personnel decisions are made without regard to race, color,
 5-25 disability, sex, religion, age, or national origin.

5-26 (b) The policy statement must include:
 5-27 (1) personnel policies, including policies relating
 5-28 to recruitment, evaluation, selection, training, and promotion of
 5-29 personnel, that show the intent of the commission to avoid the
 5-30 unlawful employment practices described by Chapter 21, Labor Code;
 5-31 and

5-32 (2) an analysis of the extent to which the composition
 5-33 of the commission's personnel is in accordance with state and
 5-34 federal law and a description of reasonable methods to achieve
 5-35 compliance with state and federal law.

5-36 (c) The policy statement must:
 5-37 (1) be updated annually;
 5-38 (2) be reviewed by the state Commission on Human
 5-39 Rights for compliance with Subsection (b)(1); and
 5-40 (3) be filed with the governor's office.

5-41 (d) The governor's office shall deliver a biennial report to
 5-42 the legislature based on the information received under Subsection
 5-43 (c)(3). The report may be made separately or as a part of other
 5-44 biennial reports made to the legislature.

5-45 Sec. 407.007. INFORMATION AND TRAINING ON STATE EMPLOYEE
 5-46 INCENTIVE PROGRAM. The executive director or the executive
 5-47 director's designee shall provide to commission employees
 5-48 information and training on the benefits and methods of
 5-49 participation in the state employee incentive program.

5-50 CHAPTER 408. POWERS AND DUTIES

5-51 Sec. 408.001. RULES. (a) The commission may not adopt a
 5-52 substantive rule before submitting the proposed rule to the
 5-53 attorney general for a ruling on the proposed rule's validity.

5-54 (b) The commission shall adopt rules as necessary for the
 5-55 implementation of this title, including rules:

5-56 (1) governing the state-sponsored inspection and
 5-57 dispute resolution process, including building and performance
 5-58 standards, administrative regulations, and the conduct of hearings
 5-59 under Subtitle D;

5-60 (2) establishing limited statutory warranty and
 5-61 building and performance standards for residential construction;

5-62 (3) approving third-party warranty programs; and

5-63 (4) approving third-party inspectors.

5-64 Sec. 408.002. FEES. The commission shall adopt fees as
 5-65 required by this title in amounts that are reasonable and necessary
 5-66 to provide sufficient revenue to cover the costs of administering
 5-67 this title.

5-68 Sec. 408.003. ACCESSIBILITY. (a) The commission shall
 5-69 comply with federal and state laws related to program and facility

6-1 accessibility.

6-2 (b) The executive director shall prepare and maintain a
6-3 written plan that describes how a person who does not speak English
6-4 can obtain reasonable access to the commission's programs and
6-5 services.

6-6 Sec. 408.004. ANNUAL REPORT. (a) The commission shall file
6-7 annually with the governor and the presiding officer of each house
6-8 of the legislature a complete and detailed written report
6-9 accounting for all funds received and disbursed by the commission
6-10 during the preceding fiscal year.

6-11 (b) The report must be in the form and reported in the time
6-12 provided by the General Appropriations Act.

6-13 CHAPTER 409. PUBLIC INTEREST INFORMATION
6-14 AND COMPLAINT PROCEDURES

6-15 Sec. 409.001. PUBLIC INTEREST INFORMATION. (a) The
6-16 commission shall prepare information of public interest describing
6-17 the functions of the commission, the provisions of the limited
6-18 statutory warranty and building and performance standards, the
6-19 state-sponsored inspection and dispute resolution process, and the
6-20 procedures by which complaints or requests are filed with and
6-21 resolved by the commission.

6-22 (b) The commission shall make the information available to
6-23 the public and appropriate state agencies and shall post the
6-24 information on the commission's website.

6-25 (c) Within 30 days of the receipt by the commission of the
6-26 registration required by Section 426.003, the commission shall mail
6-27 a copy of the information of public interest described in
6-28 Subsection (a) to the owner of the home as described in the
6-29 registration.

6-30 Sec. 409.002. PUBLIC PARTICIPATION. The commission shall
6-31 develop and implement policies that provide the public with a
6-32 reasonable opportunity to appear before the commission and to speak
6-33 on any issue under the jurisdiction of the commission.

6-34 Sec. 409.003. RECORDS OF COMPLAINTS. (a) The commission
6-35 shall maintain a file on each written complaint filed with the
6-36 commission.

6-37 (b) The commission shall provide to the person filing the
6-38 complaint and to each person who is a subject of the complaint a
6-39 copy of the commission's policies and procedures relating to
6-40 complaint investigation and resolution.

6-41 (c) The commission, at least quarterly until final
6-42 disposition of the complaint, shall notify the person filing the
6-43 complaint and each person who is a subject of the complaint of the
6-44 status of the investigation.

6-45 [Chapters 410-415 reserved for expansion]

6-46 SUBTITLE C. BUILDER REGISTRATION

6-47 CHAPTER 416. CERTIFICATE OF REGISTRATION

6-48 Sec. 416.001. REGISTRATION REQUIRED. A person may not act
6-49 as a builder unless the person holds a certificate of registration
6-50 under this chapter.

6-51 Sec. 416.002. APPLICATION FOR CERTIFICATE. (a) An
6-52 applicant for an original or renewal certificate of registration
6-53 must submit an application on a form prescribed by the commission.

6-54 (b) Each applicant must disclose in the application whether
6-55 the applicant has:

6-56 (1) entered a plea of guilty or nolo contendere to a
6-57 felony charge or a misdemeanor involving moral turpitude; or

6-58 (2) been convicted of a felony or a misdemeanor
6-59 involving moral turpitude and the time for appeal has elapsed or the
6-60 conviction has been affirmed on appeal.

6-61 (c) Disclosure under Subsection (b) is required regardless
6-62 of whether an order granting the person community supervision
6-63 suspended the imposition of the sentence.

6-64 (d) The commission may, on receipt of an application,
6-65 conduct a criminal background check of the applicant or any person
6-66 responsible for the application. The commission may obtain
6-67 criminal history record information maintained by the Department of
6-68 Public Safety, the Federal Bureau of Investigation, or any other
6-69 local, state, or national governmental entity. Unless the

7-1 information is a public record at the time the commission obtains
 7-2 the information under this subsection, the information is
 7-3 confidential, and the commission may not release or disclose the
 7-4 information to any person except under a court order or with the
 7-5 permission of the applicant.

7-6 Sec. 416.003. PROVISIONAL REGISTRATION. (a) Pending the
 7-7 receipt of the results of a criminal background check, the
 7-8 commission may issue a provisional registration certificate. On
 7-9 approval of the results of the criminal background check, the
 7-10 commission shall issue a registration certificate. On receipt of
 7-11 unfavorable results of the criminal background check, the
 7-12 commission shall revoke the provisional registration certificate.

7-13 (b) This section expires January 1, 2005.

7-14 Sec. 416.004. FEES. (a) The commission shall charge and
 7-15 collect:

7-16 (1) a filing fee for an application for an original
 7-17 certificate of registration that does not exceed \$500; and

7-18 (2) a fee for renewal of a certificate of registration
 7-19 that does not exceed \$300.

7-20 (b) The commission shall establish a fee schedule that takes
 7-21 into consideration the unit volume or dollar volume of potential
 7-22 applicants.

7-23 Sec. 416.005. GENERAL ELIGIBILITY REQUIREMENTS. A person
 7-24 may not receive a certificate of registration under this chapter
 7-25 unless:

7-26 (1) the person, at the time of the application:

7-27 (A) is at least 18 years of age; and

7-28 (B) is a citizen of the United States or a
 7-29 lawfully admitted alien; and

7-30 (2) the commission is satisfied with the person's
 7-31 honesty, trustworthiness, and integrity based on information
 7-32 supplied or discovered in connection with the person's application.

7-33 Sec. 416.006. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR
 7-34 BUSINESS ENTITIES. (a) To be eligible for an original or renewal
 7-35 certificate of registration under this chapter:

7-36 (1) a corporation must designate one of its officers
 7-37 as its agent for the purposes of this chapter;

7-38 (2) a limited liability company must designate one of
 7-39 its managers as its agent for the purposes of this chapter; and

7-40 (3) a partnership, limited partnership, or limited
 7-41 liability partnership must designate one of its managing partners
 7-42 as its agent for the purposes of this chapter.

7-43 (b) A corporation, limited liability company, partnership,
 7-44 limited partnership, or limited liability partnership is not
 7-45 eligible to be registered under this chapter and may not act as a
 7-46 builder unless the entity's designated agent is individually
 7-47 registered as a builder.

7-48 Sec. 416.007. ISSUANCE OF CERTIFICATE. (a) Not later than
 7-49 the 15th day after the date the commission receives an application
 7-50 from an applicant who meets the requirements of this chapter, the
 7-51 commission shall issue a certificate of registration to the
 7-52 applicant.

7-53 (b) The certificate of registration remains in effect for
 7-54 the period prescribed by the commission if the certificate holder
 7-55 complies with this chapter and pays the appropriate renewal fees.

7-56 Sec. 416.008. DENIAL OF REGISTRATION. (a) If the
 7-57 commission denies an application for an original certificate of
 7-58 registration or a renewal application, the commission shall give
 7-59 written notice to the applicant not later than the 15th day after
 7-60 the date the commission receives the application.

7-61 (b) The applicant may appeal the denial of the application
 7-62 if, on or before the 30th day after the date the applicant receives
 7-63 notice under this section, the applicant files a written request
 7-64 for a hearing before the commission.

7-65 (c) The commission shall:

7-66 (1) set a time and place for the hearing not later than
 7-67 the 30th day after the date the commission receives the notice of
 7-68 the appeal; and

7-69 (2) give notice of the hearing to the applicant before

8-1 the 15th day before the date of the hearing.

8-2 (d) The hearing may be continued from time to time with the
8-3 consent of the applicant.

8-4 (e) The hearing shall be before a hearings officer appointed
8-5 by the commission. After the hearing, the hearings officer shall
8-6 enter an appropriate order. The order of the hearings officer under
8-7 this subsection is a final decision.

8-8 (f) The commission shall adopt procedural rules under which
8-9 a decision by a hearings officer under this section is subject to
8-10 appeal to the commission.

8-11 (g) A hearing under this section is governed by Chapter
8-12 2001, Government Code.

8-13 Sec. 416.009. EXPIRATION OF CERTIFICATE. (a) The
8-14 commission may issue or renew a certificate of registration for a
8-15 period that does not exceed 24 months.

8-16 (b) The commission by rule may adopt a system under which
8-17 certificates of registration expire on several dates during the
8-18 year. The commission shall adjust the date for payment of renewal
8-19 fees accordingly.

8-20 (c) In a year in which the expiration date for a certificate
8-21 of registration is changed, the renewal fee payable shall be
8-22 prorated on a monthly basis so that the certificate holder pays only
8-23 that portion of the fee that is allocable to the number of months
8-24 during which the certificate of registration is valid. On renewal
8-25 of the certificate of registration on the new expiration date, the
8-26 total renewal fee is payable.

8-27 Sec. 416.010. OFFICE LOCATION; CHANGE OF ADDRESS. (a) A
8-28 builder shall maintain a fixed office location in this state. The
8-29 address of the builder's principal place of business must be
8-30 designated on the certificate of registration.

8-31 (b) Not later than the 30th day after the date a builder
8-32 moves from the address designated on the certificate of
8-33 registration, the builder shall submit an application, accompanied
8-34 by the appropriate fee, for a certificate of registration that
8-35 designates the new location of the builder's principal place of
8-36 business. The commission shall issue a certificate of registration
8-37 that designates the new location if the new location complies with
8-38 the requirements of this section.

8-39 (c) This section does not require a builder to obtain a
8-40 certificate of registration for each sales office.

8-41 Sec. 416.011. TEXAS STAR BUILDER DESIGNATION. (a) The
8-42 commission shall establish rules and procedures for a program
8-43 through which a builder can be designated as a "Texas Star Builder."
8-44 A builder's participation in the program is voluntary and is not a
8-45 requirement for the issuance of a certificate of registration
8-46 required under this chapter.

8-47 (b) A builder who participates in this program will be
8-48 allowed to represent to the public that the builder is a "Texas Star
8-49 Builder" and meets all of the requirements and qualifications that
8-50 are set forth by the commission for the program.

8-51 (c) If the commission determines that a builder must meet
8-52 certain education requirements to participate in the "Texas Star
8-53 Builder" program, a builder may satisfy those requirements by
8-54 completing education programs offered by a trade association or
8-55 other organization whose education programs have been approved by
8-56 the commission.

8-57 (d) The certification issued by the commission as a "Texas
8-58 Star Builder" shall be for the same period of time as the builder's
8-59 registration under this chapter.

8-60 CHAPTER 417. PROHIBITED PRACTICES; DISCIPLINARY PROCEEDINGS

8-61 Sec. 417.001. GROUNDS FOR DISCIPLINARY ACTION. A person is
8-62 subject to disciplinary action under this chapter for:

8-63 (1) fraud or deceit in obtaining a certificate of
8-64 registration;

8-65 (2) misappropriation of trust funds in the practice of
8-66 residential construction;

8-67 (3) naming false consideration in a contract to sell a
8-68 new home or in a construction contract;

8-69 (4) discriminating on the basis of race, color,

9-1 religion, sex, national origin, or ancestry;

9-2 (5) publishing a false or misleading advertisement;

9-3 (6) failure to honor, within a reasonable time, a
9-4 check issued to the commission after the commission has sent by
9-5 certified mail a request for payment to the person's last known
9-6 business address, according to commission records;

9-7 (7) failure to pay an administrative penalty assessed
9-8 by the commission under Chapter 418;

9-9 (8) nonpayment of a final nonappealable judgment
9-10 arising from a construction defect or other transaction between the
9-11 person and a homeowner;

9-12 (9) failure to register a home as required by Section
9-13 426.003;

9-14 (10) failure to remit the fee for registration of a
9-15 home under Section 426.003; or

9-16 (11) failure to reimburse a homeowner the amount
9-17 ordered by the commission as provided in Section 428.004(d).

9-18 Sec. 417.002. DISCIPLINARY POWERS OF COMMISSION. On a
9-19 determination that a ground for disciplinary action under Section
9-20 417.001 exists, the commission may:

9-21 (1) revoke or suspend a certificate of registration;

9-22 (2) probate the suspension of a certificate of
9-23 registration; or

9-24 (3) formally or informally reprimand a certificate
9-25 holder.

9-26 Sec. 417.003. HEARING. (a) If the commission proposes to
9-27 take a disciplinary action against a person under Section 417.002,
9-28 the person is entitled to a hearing before the commission.

9-29 (b) The commission shall adopt procedural rules by which all
9-30 decisions to take disciplinary action under this chapter are
9-31 subject to appeal to the commission.

9-32 (c) The commission shall prescribe the time and place of the
9-33 hearing.

9-34 (d) A hearing under this section is governed by Chapter
9-35 2001, Government Code.

9-36 Sec. 417.004. APPEAL. (a) A person aggrieved by a ruling,
9-37 order, or decision of the commission is entitled to appeal to a
9-38 district court in the county in which the administrative hearing
9-39 was held.

9-40 (b) An appeal under this section is governed by Chapter
9-41 2001, Government Code.

9-42 CHAPTER 418. ADMINISTRATIVE PENALTY

9-43 Sec. 418.001. IMPOSITION OF ADMINISTRATIVE PENALTY. In a
9-44 contested case involving disciplinary action, the commission may,
9-45 as part of the commission's order, impose an administrative penalty
9-46 on a certificate holder who violates this title or a rule adopted or
9-47 order issued by the commission under this title.

9-48 Sec. 418.002. AMOUNT OF PENALTY. (a) An administrative
9-49 penalty imposed under this chapter may not exceed \$5,000 for each
9-50 violation.

9-51 (b) In determining the amount of an administrative penalty,
9-52 the hearings officer or commission shall consider:

9-53 (1) the seriousness of the violation, including the
9-54 nature, circumstances, extent, and gravity of the prohibited acts;

9-55 (2) the history of previous violations;

9-56 (3) the amount necessary to deter a future violation;

9-57 (4) efforts to correct the violation; and

9-58 (5) any other matter justice may require.

9-59 Sec. 418.003. PAYMENT OF PENALTY. The commission shall
9-60 specify in an order imposing an administrative penalty under this
9-61 chapter a date on or before the 30th day after the date the order
9-62 becomes final and unappealable by which the person against whom the
9-63 penalty is imposed must pay the penalty.

9-64 Sec. 418.004. ENFORCEMENT OF PENALTY. If a person does not
9-65 pay an administrative penalty imposed under this chapter and
9-66 enforcement of the penalty is not stayed, the commission may:

9-67 (1) refer the matter to the attorney general for
9-68 collection of the penalty; or

9-69 (2) enforce any part of the order that specifies

10-1 disciplinary action to be taken against the certificate holder if
 10-2 the certificate holder fails to pay the administrative penalty
 10-3 within the time prescribed.

10-4 [Chapters 419-425 reserved for expansion]

10-5 SUBTITLE D. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION
 10-6 PROCESS; STATUTORY WARRANTY AND BUILDING AND PERFORMANCE STANDARDS

10-7 CHAPTER 426. GENERAL PROVISIONS

10-8 Sec. 426.001. APPLICABILITY OF SUBTITLE. (a) This
 10-9 subtitle applies to a dispute between a builder and a homeowner if:

10-10 (1) the dispute arises out of an alleged construction
 10-11 defect, other than a claim solely for:

10-12 (A) personal injury, survival, or wrongful
 10-13 death; or

10-14 (B) damage to goods; and

10-15 (2) a request is submitted to the commission on or
 10-16 before the 10th anniversary of the date of the initial transfer of
 10-17 title from the builder to the initial owner of the home or the
 10-18 improvement that is the subject of the dispute or, if there is not a
 10-19 closing, the date on which the contract for construction of the
 10-20 improvement was entered into.

10-21 (b) This subtitle does not apply to a dispute arising out
 10-22 of:

10-23 (1) an alleged violation of Section 27.01, Business &
 10-24 Commerce Code;

10-25 (2) a builder's wrongful abandonment of an improvement
 10-26 project before completion; or

10-27 (3) a violation of Chapter 162.

10-28 (c) For the purposes of this section, "damage to goods" does
 10-29 not include damage to a home.

10-30 Sec. 426.002. CONFLICT WITH CERTAIN OTHER LAW. To the
 10-31 extent of any conflict between this subtitle and any other law,
 10-32 including Chapter 27 and the Deceptive Trade Practices-Consumer
 10-33 Protection Act (Subchapter E, Chapter 17, Business & Commerce
 10-34 Code), this subtitle prevails.

10-35 Sec. 426.003. REGISTRATION OF HOME. (a) A builder shall
 10-36 register a new home with the commission on or before the 15th day of
 10-37 the month following the month in which the transfer of title from
 10-38 the builder to the homeowner occurs. The registration must include
 10-39 the information required by the commission by rule and be
 10-40 accompanied by the fee required by Subsection (c).

10-41 (b) A builder who enters into a transaction governed by this
 10-42 title, other than the transfer of title of a new home from the
 10-43 builder to the seller, shall register the home involved in the
 10-44 transaction with the commission. The registration must:

10-45 (1) include the information required by the commission
 10-46 by rule;

10-47 (2) be accompanied by the fee required by Subsection
 10-48 (c); and

10-49 (3) be delivered to the commission not later than the
 10-50 15th day after the earlier of:

10-51 (A) the date of the agreement that describes the
 10-52 transaction between the homeowner and the builder; or

10-53 (B) the commencement of the work on the home.

10-54 (c) A builder must remit to the commission a registration
 10-55 fee for each home registered with the commission in an amount
 10-56 determined by the commission. The fee set by the commission under
 10-57 this subsection may not exceed \$125.

10-58 (d) The commission may assess a late payment penalty that
 10-59 does not exceed \$500 against a builder who fails to pay a required
 10-60 registration fee in the time prescribed by this section.

10-61 Sec. 426.004. APPLICATION AND INSPECTION FEES. (a) A party
 10-62 who submits a matter to the commission for the state-sponsored
 10-63 inspection and dispute resolution process shall pay to the
 10-64 commission:

10-65 (1) an application fee in an amount determined by the
 10-66 commission; and

10-67 (2) any additional amount required by the commission
 10-68 to cover the expense of the third-party inspector.

10-69 (b) The commission shall adopt rules permitting a waiver or

11-1 reduction of the application fee and inspection expenses for
 11-2 homeowners demonstrating a financial inability to pay the fees and
 11-3 expenses.

11-4 (c) If the transfer of the title of the home from the builder
 11-5 to the initial homeowner occurred before January 1, 2004, or if the
 11-6 contract for improvements or additions between the builder and
 11-7 homeowner was entered into before January 1, 2004, the person who
 11-8 submits a request involving the home shall pay, in addition to the
 11-9 application fee and inspection expenses required by this section,
 11-10 the registration fee required by Section 426.003.

11-11 Sec. 426.005. PREREQUISITE TO ACTION. (a) A homeowner must
 11-12 comply with this subtitle before initiating an action for damages
 11-13 or other relief arising from an alleged construction defect.

11-14 (b) An action described by Subsection (a) must be filed:

11-15 (1) on or before the 90th day after the date the
 11-16 third-party inspector issues the inspector's recommendation; or

11-17 (2) if the recommendation is appealed, not later than
 11-18 the 90th day after the date the commission issues its ruling on the
 11-19 appeal.

11-20 (c) Any claim for personal injuries, damages to personal
 11-21 goods, or consequential damages or other relief arising out of an
 11-22 alleged construction defect must be included in any action
 11-23 concerning the construction defect.

11-24 (d) This section does not apply to an action that is
 11-25 initiated by a person subrogated to the rights of a claimant if
 11-26 payment was made pursuant to a claim made under an insurance policy.

11-27 Sec. 426.006. TIME FOR REQUESTING INSPECTION AND DISPUTE
 11-28 RESOLUTION. The state-sponsored inspection and dispute resolution
 11-29 process must be requested on or before the second anniversary of the
 11-30 date of discovery of the conditions claimed to be evidence of the
 11-31 construction defect but not later than the 30th day after the date
 11-32 the applicable warranty period expires.

11-33 Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person
 11-34 who submits a request for state-sponsored inspection and dispute
 11-35 resolution must disclose in the request the name of any person who,
 11-36 before the request is submitted, inspected the home on behalf of the
 11-37 requestor in connection with the construction defect alleged in the
 11-38 request. If a person's name is known to the requestor at the time of
 11-39 the request and is not disclosed as required by this section, the
 11-40 requestor may not designate the person as an expert or use materials
 11-41 prepared by that person in:

11-42 (1) the state-sponsored inspection and dispute
 11-43 resolution process arising out of the request; or

11-44 (2) any action arising out of the construction defect
 11-45 that is the subject of the request.

11-46 Sec. 426.008. REBUTTABLE PRESUMPTION OF THIRD-PARTY
 11-47 INSPECTOR'S RECOMMENDATION OR RULING BY PANEL OF STATE INSPECTORS.

11-48 (a) In any action involving a construction defect brought after a
 11-49 recommendation by a third-party inspector or ruling by a panel of
 11-50 state inspectors on the existence of the construction defect or its
 11-51 appropriate repair, the recommendation or ruling shall constitute a
 11-52 rebuttable presumption. A party seeking to dispute, vacate, or
 11-53 overcome that presumption must establish by clear and convincing
 11-54 evidence that the recommendation or ruling is inconsistent with the
 11-55 applicable warranty and building and performance standards.

11-56 (b) The presumption established by this section applies
 11-57 only to an action between the homeowner and the builder. A
 11-58 recommendation or ruling under this subtitle is not admissible in
 11-59 an action between any other parties.

11-60 CHAPTER 427. INSPECTORS

11-61 Sec. 427.001. QUALIFICATIONS OF THIRD-PARTY INSPECTORS.

11-62 (a) A third-party inspector approved by the commission must:

11-63 (1) meet the minimum qualifications prescribed by this
 11-64 section and any other qualifications prescribed by the commission
 11-65 by rule; and

11-66 (2) submit an application to the commission annually
 11-67 with an application fee in the amount required by the commission by
 11-68 rule.

11-69 (b) A third-party inspector who inspects an issue involving

12-1 workmanship and materials must:

12-2 (1) have a minimum of five years' experience in the
12-3 residential construction industry; and

12-4 (2) be certified as a residential combination
12-5 inspector by the International Code Council.

12-6 (c) A third-party inspector who inspects an issue involving
12-7 a structural matter must:

12-8 (1) be an approved structural engineer or approved
12-9 architect; and

12-10 (2) have a minimum of 10 years' experience in
12-11 residential construction.

12-12 (d) Each third-party inspector who inspects an issue
12-13 involving a structural matter must receive, in accordance with
12-14 commission rules:

12-15 (1) initial training regarding the state-sponsored
12-16 inspection and dispute resolution process and this subtitle; and

12-17 (2) annual continuing education in the inspector's
12-18 area of practice.

12-19 (e) A third-party inspector may not receive more than 10
12-20 percent of the inspector's gross income in a federal income tax year
12-21 from providing expert witness services, including retention for the
12-22 purpose of providing testimony, evidence, or consultation in
12-23 connection with a pending or threatened legal action.

12-24 (f) In adopting rules under Subsection (d), the commission
12-25 shall recognize any continuing education requirements established
12-26 for engineers and architects.

12-27 Sec. 427.002. STATE INSPECTORS. (a) The commission shall
12-28 employ state inspectors to:

12-29 (1) review on an appeals panel the recommendations of
12-30 third-party inspectors;

12-31 (2) provide consultation to third-party inspectors;
12-32 and

12-33 (3) administer the state-sponsored inspection and
12-34 dispute resolution process.

12-35 (b) A state inspector must be certified as a residential
12-36 combination inspector by the International Code Council.

12-37 CHAPTER 428. STATE-SPONSORED INSPECTION AND DISPUTE
12-38 RESOLUTION PROCESS

12-39 Sec. 428.001. REQUEST FOR RESOLUTION. (a) If a dispute
12-40 between a homeowner and a builder arises out of an alleged
12-41 construction defect, the homeowner or the builder may submit to the
12-42 commission a written request for state-sponsored inspection and
12-43 dispute resolution.

12-44 (b) The request must:

12-45 (1) specify in reasonable detail each alleged
12-46 construction defect that is a subject of the request;

12-47 (2) state the amount of any known out-of-pocket
12-48 expenses and engineering or consulting fees incurred by the
12-49 homeowner in connection with each alleged construction defect;

12-50 (3) include any evidence that depicts the nature and
12-51 cause of each alleged construction defect and the nature and extent
12-52 of repairs necessary to remedy the construction defect, including,
12-53 if available, expert reports, photographs, and videotapes, if that
12-54 evidence would be discoverable under Rule 192, Texas Rules of Civil
12-55 Procedure;

12-56 (4) be accompanied by the fees required under Section
12-57 426.004; and

12-58 (5) state the name of any person who has, on behalf of
12-59 the requestor, inspected the home in connection with an alleged
12-60 construction defect.

12-61 (c) Not later than the 30th day before the date a homeowner
12-62 submits a request under this section, the homeowner must notify the
12-63 builder in writing of each construction defect the homeowner claims
12-64 to exist. After the notice is provided, the builder must be
12-65 provided with a reasonable opportunity to inspect the home or have
12-66 the builder's designated consultants inspect the home.

12-67 (d) A person who submits a request under this section must
12-68 send by certified mail, return receipt requested, a copy of the
12-69 request, including evidence submitted with the request, to each

13-1 other party involved in the dispute.

13-2 (e) The commission by rule shall establish methods by which
 13-3 homeowners may be notified of the name, mailing address, and
 13-4 telephone number of the commission for the purpose of directing a
 13-5 request to the commission.

13-6 (f) The commission shall provide a person who files a
 13-7 request with a copy of the commission's policies and procedures
 13-8 relating to investigation and resolution of a request.

13-9 (g) The commission by rule shall establish a standard form
 13-10 for submitting a request under this section and provide a means to
 13-11 submit a request electronically.

13-12 (h) The filing of a request under this section tolls the
 13-13 limitations period in an action between the homeowner and the
 13-14 builder arising out of the subject of the request until the 45th day
 13-15 after the date a final, nonappealable recommendation is issued
 13-16 under this title in response to the request.

13-17 Sec. 428.002. BUILDER'S RIGHT OF INSPECTION. (a) In
 13-18 addition to the right of inspection provided by Section 428.001(c),
 13-19 at any time before the conclusion of the state-sponsored inspection
 13-20 and dispute resolution process and on the builder's written
 13-21 request, the builder shall be given reasonable opportunity to
 13-22 inspect the home that is the subject of the request or have the home
 13-23 inspected to determine the nature and cause of the construction
 13-24 defect and the nature and extent of repairs necessary to remedy the
 13-25 construction defect.

13-26 (b) The builder may take reasonable steps to document the
 13-27 construction defect and the condition of the home.

13-28 (c) If the homeowner delays the inspection for more than
 13-29 five days after the date of receiving the builder's written
 13-30 request, any period for subsequent action to be taken by the builder
 13-31 or the third-party inspector shall be extended one day for each day
 13-32 the inspection is delayed after the fifth day.

13-33 Sec. 428.003. INSPECTION BY THIRD-PARTY INSPECTOR. (a) On
 13-34 or before the 15th day after the date the commission receives a
 13-35 request, the commission shall appoint a third-party inspector to
 13-36 inspect the home and meet with the homeowner and the builder.

13-37 (b) The commission shall establish rules and regulations
 13-38 that allow the homeowner and the builder to each have the right to
 13-39 strike the appointment of a third-party inspector one time for each
 13-40 request submitted.

13-41 Sec. 428.004. INSPECTOR'S RECOMMENDATION. (a) If the
 13-42 dispute involves workmanship and materials in the home of a
 13-43 nonstructural matter, the third-party inspector shall issue a
 13-44 recommendation not later than the 15th day after the date the
 13-45 third-party inspector receives the appointment from the
 13-46 commission.

13-47 (b) If the dispute involves a structural matter in the home,
 13-48 the commission shall appoint an approved engineer to be the
 13-49 third-party inspector. The third-party inspector shall inspect the
 13-50 home not later than the 30th day after the date the request is
 13-51 submitted and issue a recommendation not later than the 60th day
 13-52 after the date the third-party inspector receives the assignment
 13-53 from the commission, unless additional time is requested by the
 13-54 third-party inspector or a party to the dispute. The commission
 13-55 shall adopt rules governing the extension of time under this
 13-56 subsection.

13-57 (c) The third-party inspector's recommendation must:

13-58 (1) address only the construction defect, based on the
 13-59 applicable warranty and building and performance standards; and

13-60 (2) designate a method or manner of repair, if any.

13-61 (d) Except as provided by this subsection, the third-party
 13-62 inspector's recommendation may not include payment of any monetary
 13-63 consideration. If the inspector finds for the party who submitted
 13-64 the request, the commission may order the other party to reimburse
 13-65 all or part of the fees and inspection expenses paid by the
 13-66 requestor under Section 426.004.

13-67 Sec. 428.005. THREAT TO HEALTH OR SAFETY. A builder who
 13-68 receives written notice of a request relating to a construction
 13-69 defect that creates an imminent threat to the health or safety of

14-1 the inhabitants of the residence shall take reasonable steps to
 14-2 cure the defect as soon as practicable. If the builder fails to
 14-3 cure the defect in a reasonable time, the homeowner may have the
 14-4 defect cured and recover from the builder the reasonable cost of the
 14-5 cure plus reasonable attorney's fees and expenses associated with
 14-6 curing the defect in addition to any other damages not inconsistent
 14-7 with this subtitle.

14-8 CHAPTER 429. APPEAL OF THIRD-PARTY INSPECTOR'S RECOMMENDATION

14-9 Sec. 429.001. APPEAL. (a) A homeowner or builder may
 14-10 appeal a third-party inspector's recommendation on or before the
 14-11 15th day after the date the recommendation is issued.

14-12 (b) If a homeowner or builder appeals a third-party
 14-13 inspector's recommendation, the executive director shall appoint
 14-14 three state inspectors to a panel to review the recommendation. If
 14-15 the recommendation involves a dispute regarding a structural
 14-16 failure, one of the state inspectors on the panel must be a licensed
 14-17 professional engineer.

14-18 (c) The panel shall:

14-19 (1) review the recommendation without a hearing unless
 14-20 a hearing is otherwise required by rules adopted by the commission;

14-21 (2) approve, reject, or modify the recommendation of
 14-22 the third-party inspector or remand the dispute for further action
 14-23 by the third-party inspector; and

14-24 (3) issue written findings of fact and a ruling on the
 14-25 appeal not later than the 30th day after the date the notice of
 14-26 appeal is filed with the commission.

14-27 CHAPTER 430. WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS

14-28 Sec. 430.001. LIMITED STATUTORY WARRANTIES AND BUILDING AND
 14-29 PERFORMANCE STANDARDS. (a) The commission by rule shall adopt
 14-30 limited statutory warranties and building and performance
 14-31 standards for residential construction that comply with this
 14-32 section.

14-33 (b) The warranty periods shall be:

14-34 (1) one year for workmanship and materials;

14-35 (2) two years for plumbing, electrical, heating, and
 14-36 air-conditioning delivery systems; and

14-37 (3) 10 years for major structural components of the
 14-38 home.

14-39 (c) The limited statutory warranties and building and
 14-40 performance standards must:

14-41 (1) require substantial compliance with the
 14-42 nonelectrical standards contained in the version of the
 14-43 International Residential Code for One- and Two-Family Dwellings
 14-44 published by the International Code Council that is applicable
 14-45 under Subsection (d) and the electrical standards contained in the
 14-46 version of the National Electrical Code that is applicable under
 14-47 Subsection (e);

14-48 (2) include standards for mold reduction and
 14-49 remediation that comply with Section 430.002;

14-50 (3) establish standards for performance for interior
 14-51 and exterior components of a home, including foundations, floors,
 14-52 ceilings, walls, roofs, drainage, landscaping, irrigation,
 14-53 heating, cooling, and electrical and plumbing components; and

14-54 (4) contain standards that are not less stringent than
 14-55 the standards required by the United States Department of Housing
 14-56 and Urban Development for FHA programs as set forth in 24 C.F.R.
 14-57 Sections 203.202 through 203.206.

14-58 (d) The International Residential Code for One- and
 14-59 Two-Family Dwellings that applies to nonelectrical aspects of
 14-60 residential construction for the purposes of the limited statutory
 14-61 warranties and building and performance standards adopted under
 14-62 this section is:

14-63 (1) for residential construction located in a
 14-64 municipality or the extraterritorial jurisdiction of a
 14-65 municipality, the version of the International Residential Code
 14-66 applicable to nonelectrical aspects of residential construction in
 14-67 the municipality under Section 214.212, Local Government Code;

14-68 (2) for residential construction located in an
 14-69 unincorporated area not in the extraterritorial jurisdiction of a

15-1 municipality, the version of the International Residential Code
 15-2 applicable to nonelectrical aspects of residential construction in
 15-3 the municipality that is the county seat of the county in which the
 15-4 construction is located; and

15-5 (3) for residential construction located in an
 15-6 unincorporated area in a county that does not contain an
 15-7 incorporated area, the version of the International Residential
 15-8 Code that existed on May 1, 2001.

15-9 (e) The National Electrical Code for One- and Two-Family
 15-10 Dwellings that applies to electrical aspects of residential
 15-11 construction for the purposes of this section is:

15-12 (1) for residential construction located in a
 15-13 municipality or the extraterritorial jurisdiction of a
 15-14 municipality, the version of the National Electrical Code
 15-15 applicable to electrical aspects of residential construction in the
 15-16 municipality under Section 214.214, Local Government Code;

15-17 (2) for residential construction located in an
 15-18 unincorporated area not in the extraterritorial jurisdiction of a
 15-19 municipality, the version of the National Electrical Code
 15-20 applicable to electrical aspects of residential construction in the
 15-21 municipality that is the county seat of the county in which the
 15-22 construction is located; and

15-23 (3) for residential construction located in an
 15-24 unincorporated area in a county that does not contain an
 15-25 incorporated area, the version of the National Electrical Code that
 15-26 existed on May 1, 2001.

15-27 (f) Except as provided by a written agreement between the
 15-28 builder and the initial homeowner, a warranty period adopted under
 15-29 this section for a new home begins on the earlier of the date of:

15-30 (1) occupancy; or
 15-31 (2) transfer of title from the builder to the initial
 15-32 homeowner.

15-33 (g) A warranty period adopted under this section for an
 15-34 improvement other than a new home begins on the date the improvement
 15-35 is substantially completed.

15-36 (h) The building and performance standards adopted by the
 15-37 commission under this section may be adopted in phases and amended
 15-38 or supplemented by the commission from time to time as the
 15-39 commission receives additional evidence or information from task
 15-40 forces or other sources regarding any improvements or developments
 15-41 in the areas of residential homebuilding practices, procedures, or
 15-42 technology.

15-43 Sec. 430.002. MOLD REDUCTION AND REMEDIATION; TASK FORCE.

15-44 (a) The building and performance standards adopted under Section
 15-45 430.001 must include measures that are designed to reduce the
 15-46 general population's exposure to mold often formed in water-damaged
 15-47 building materials and that include:

15-48 (1) methods by which mold, water damage, and microbial
 15-49 volatile compounds in indoor environments may be recognized; and

15-50 (2) recommended management practices for:
 15-51 (A) limiting moisture intrusion in a home,
 15-52 including the use of a water leak detection system listed by
 15-53 Underwriters Laboratories that is capable of shutting off a valve
 15-54 on the main water line coming into the structure immediately upon
 15-55 detecting a water leak in the structure; and

15-56 (B) mold remediation.

15-57 (b) The commission shall appoint a task force to advise the
 15-58 commission with regard to adoption of standards under this section.
 15-59 The task force must include representatives of public health
 15-60 officers of this state, health and medical experts, mold abatement
 15-61 experts, and representatives of affected consumers and industries.
 15-62 The commission and the task force shall consider the feasibility of
 15-63 adopting permissible limits for exposure to mold in indoor
 15-64 environments.

15-65 Sec. 430.003. CERTAIN DESIGN RECOMMENDATIONS; ADVISORY
 15-66 COMMITTEE. The commission shall appoint a task force to develop
 15-67 design recommendations for residential construction that encourage
 15-68 rain harvesting and water recycling.

15-69 Sec. 430.004. STATUTORY WARRANTIES EXCLUSIVE. The

warranties established under this chapter supersede all implied warranties. The only warranties that exist for residential construction or residential improvements are warranties created by this chapter or by other statutes expressly referring to residential construction or residential improvements, or any express, written warranty acknowledged by the homeowner and the builder. A court may not discern or declare any other implied warranty.

Sec. 430.005. WAIVER BY CONTRACT PROHIBITED. A contract between a builder and a homeowner may not waive the limited statutory warranties and building and performance standards adopted under this chapter. This section does not prohibit a builder and a homeowner from contracting for more stringent warranties and building standards than are provided under this chapter.

Sec. 430.006. APPROVAL OF THIRD-PARTY WARRANTY COMPANY. (a) The commission may approve as a third-party warranty company for the purposes of Section 430.007:

(1) an entity that has operated warranty programs in this state for at least five years;

(2) a company whose performance is insured by an insurance company authorized to engage in the business of insurance in this state; or

(3) an insurance company that insures the warranty obligations of a builder under the statutory warranty and building and performance standards.

(b) A third-party warranty company must submit to the commission an annual application and fee in the form and in the amount required by the commission by rule before the company may be approved under this section.

Sec. 430.007. THIRD-PARTY WARRANTY COMPANY. (a) If a builder chooses to provide a third-party warranty company approved by the commission, the builder may limit liability to a homeowner under the terms of that warranty.

(b) A limitation of liability under this section is not effective unless the company providing the warranty:

(1) agrees to perform the builder's warranty obligations under this chapter; and

(2) actually pays for or corrects any construction defect covered by the warranty.

(c) A third-party warranty company approved by the commission has all of the obligations and rights of a builder under this subtitle regarding performance of repairs to remedy construction defects or payment of money instead of repair.

(d) The third-party warranty company may not assume liability for personal injuries or damage to personal property. A builder does not avoid liability for personal injuries or damage to personal property for which the builder would otherwise be liable under law by providing a written warranty from a third-party warranty company.

(e) A company that administers a warranty for a third-party warranty company is not liable for any damages resulting from a construction defect or from repairs covered under the warranty.

Sec. 430.008. MINIMUM STANDARDS FOR DETERMINATION OF DEFECT. A third-party warranty company shall use defect inspection procedures substantially similar to the procedures adopted by the commission under this subtitle. A warranty company may adopt warranty standards in addition to the standards adopted by the commission, but it may not reduce the limited statutory warranty and building and performance standards.

Sec. 430.009. EFFECT OF SUBTITLE ON OTHER RIGHTS AND OBLIGATIONS. (a) This subtitle provides the sole rights and obligations between a homeowner and a builder unless additional rights and obligations are provided in an express, written contract between the homeowner and the builder. Except as permitted by this subtitle, an express, written contract between a homeowner and a builder may not limit the obligations of a builder under this title.

(b) After the issuance of written findings of fact and a ruling on an appeal under Chapter 429, a homeowner may bring a cause

17-1 of action against a builder or third-party warranty company for
 17-2 breach of a limited statutory warranty adopted by the commission
 17-3 under this subtitle. In an action brought under this subsection,
 17-4 the homeowner may recover only those damages provided by Section
 17-5 27.004(g).

17-6 (c) This subtitle creates the only cognizable cause of
 17-7 action available against a builder or third-party warranty company
 17-8 with regard to construction defects.

17-9 SECTION 1.02. (a) On or before December 1, 2003, the
 17-10 governor shall appoint the members of the Texas Residential
 17-11 Construction Commission in accordance with Title 16, Property Code,
 17-12 as added by this article. In making the initial appointments, the
 17-13 governor shall designate three members for terms expiring February
 17-14 1, 2005, three members for terms expiring February 1, 2007, and
 17-15 three members for terms expiring February 1, 2009.

17-16 (b) The governor shall designate a person to perform the
 17-17 ministerial acts necessary for posting notice of and holding the
 17-18 first meeting of the commission.

17-19 (c) Section 406.006, Property Code, as added by this
 17-20 article, does not apply to a member of the Texas Residential
 17-21 Construction Commission until March 1, 2004.

17-22 SECTION 1.03. As soon as possible after appointment of its
 17-23 members, the Texas Residential Construction Commission shall adopt
 17-24 limited statutory warranties and building and performance
 17-25 standards under Section 430.001, Property Code, as added by this
 17-26 article. The warranties and building and performance standards
 17-27 adopted by the commission apply only to residential construction
 17-28 that begins on or after the effective date of those warranties and
 17-29 building and performance standards as determined by the commission.
 17-30 Residential construction that begins before the effective date of
 17-31 those warranties and building and performance standards is governed
 17-32 by the warranties and building and performance standards applicable
 17-33 to the construction before that date.

17-34 SECTION 1.04. On or before March 1, 2004, the Texas
 17-35 Residential Construction Commission shall begin requiring
 17-36 registration under Subtitle C, Title 16, Property Code, as added by
 17-37 this article.

17-38 SECTION 1.05. On January 1, 2004, the Texas Residential
 17-39 Construction Commission shall begin collecting, and builders are
 17-40 required to remit, the registration fee required by Section
 17-41 426.003, Property Code, as added by this Act.

17-42 ARTICLE 2. RESIDENTIAL CONSTRUCTION LIABILITY ACTIONS

17-43 SECTION 2.01. Section 27.001, Property Code, is amended to
 17-44 read as follows:

17-45 Sec. 27.001. DEFINITIONS. In this chapter:

17-46 (1) "Action" means a court or judicial proceeding or
 17-47 an arbitration.

17-48 (2) "Appurtenance" means any structure or
 17-49 recreational facility that is appurtenant to a residence but is not
 17-50 a part of the dwelling unit.

17-51 (3) "Commission" means the Texas Residential
 17-52 Construction Commission.

17-53 (4) ~~[(2)]~~ "Construction defect" has the meaning
 17-54 assigned by Section 401.004 for an action to which Subtitle D, Title
 17-55 16, applies and for any other action means a matter concerning the
 17-56 design, construction, or repair of a new residence, of an
 17-57 alteration of or repair or addition to an existing residence, or of
 17-58 an appurtenance to a residence, on which a person has a complaint
 17-59 against a contractor. The term may include any physical damage to
 17-60 the residence, any appurtenance, or the real property on which the
 17-61 residence and appurtenance are affixed proximately caused by a
 17-62 construction defect.

17-63 (5) ~~[(3)]~~ "Contractor" means a builder, as defined by
 17-64 Section 401.003, and any person contracting with an owner for the
 17-65 construction or sale of a new residence constructed by that person
 17-66 or of an alteration of or addition to an existing residence, repair
 17-67 of a new or existing residence, or construction, sale, alteration,
 17-68 addition, or repair of an appurtenance to a new or existing
 17-69 residence. The term includes:

18-1 (A) an owner, officer, director, shareholder,
 18-2 partner, or employee of the contractor; and

18-3 (B) a risk retention group registered under
 18-4 Article 21.54, Insurance Code, that insures all or any part of a
 18-5 contractor's liability for the cost to repair a residential
 18-6 construction defect.

18-7 (6) "Economic damages" means compensatory damages for
 18-8 pecuniary loss proximately caused by a construction defect. The
 18-9 term does not include exemplary damages or damages for physical
 18-10 pain and mental anguish, loss of consortium, disfigurement,
 18-11 physical impairment, or loss of companionship and society.

18-12 (7) [~~4~~] "Residence" means the real property and
 18-13 improvements for a single-family house, duplex, triplex, or
 18-14 quadruplex or a unit in a multiunit residential structure in which
 18-15 title to the individual units is transferred to the owners under a
 18-16 condominium or cooperative system.

18-17 (8) [~~5~~] "Structural failure" has the meaning
 18-18 assigned by Section 401.002 for an action to which Subtitle D, Title
 18-19 16, applies and for any other action means actual physical damage to
 18-20 the load-bearing portion of a residence caused by a failure of the
 18-21 load-bearing portion.

18-22 (9) "Third-party inspector" has the meaning assigned
 18-23 by Section 401.002.

18-24 SECTION 2.02. Section 27.002, Property Code, is amended by
 18-25 amending Subsections (a) and (b) and adding Subsection (d) to read
 18-26 as follows:

18-27 (a) This chapter applies to:

18-28 (1) any action to recover damages or other relief
 18-29 arising [~~resulting~~] from a construction defect, except a claim for
 18-30 personal injury, survival, or wrongful death or for damage to
 18-31 goods; and

18-32 (2) any subsequent purchaser of a residence who files
 18-33 a claim against a contractor.

18-34 (b) To the extent of conflict between this chapter and any
 18-35 other law, including the Deceptive Trade Practices-Consumer
 18-36 Protection Act (Subchapter E, Chapter 17, Business & Commerce Code)
 18-37 or a common law cause of action, this chapter prevails.

18-38 (d) This chapter does not apply to an action to recover
 18-39 damages that arise from:

18-40 (1) a violation of Section 27.01, Business & Commerce
 18-41 Code;

18-42 (2) a contractor's wrongful abandonment of an
 18-43 improvement project before completion; or

18-44 (3) a violation of Chapter 162.

18-45 SECTION 2.03. Section 27.003, Property Code, is amended to
 18-46 read as follows:

18-47 Sec. 27.003. LIABILITY. (a) In an action to recover
 18-48 damages or other relief arising [~~resulting~~] from a construction
 18-49 defect:

18-50 (1) a contractor is not liable for any percentage of
 18-51 damages caused by:

18-52 (A) negligence of a person other than the
 18-53 contractor or an agent, employee, or subcontractor of the
 18-54 contractor;

18-55 (B) failure of a person other than the contractor
 18-56 or an agent, employee, or subcontractor of the contractor to:

18-57 (i) take reasonable action to mitigate the
 18-58 damages; or

18-59 (ii) take reasonable action to maintain the
 18-60 residence;

18-61 (C) normal wear, tear, or deterioration;

18-62 (D) normal shrinkage due to drying or settlement
 18-63 of construction components within the tolerance of building
 18-64 standards; or

18-65 (E) the contractor's reliance on written
 18-66 information relating to the residence, appurtenance, or real
 18-67 property on which the residence and appurtenance are affixed that
 18-68 was obtained from official government records, if the written
 18-69 information was false or inaccurate and the contractor did not know

19-1 and could not reasonably have known of the falsity or inaccuracy of
 19-2 the information; and

19-3 (2) if an assignee of the claimant or a person
 19-4 subrogated to the rights of a claimant fails to provide the
 19-5 contractor with the written notice and opportunity to inspect and
 19-6 offer to repair [to the contractor] required by Section 27.004 or
 19-7 fails to request state-sponsored inspection and dispute resolution
 19-8 under Chapter 428, if applicable, [27.004(a)] before performing
 19-9 repairs, the contractor is not liable for the cost of any repairs or
 19-10 any percentage of damages caused by repairs made to a construction
 19-11 defect at the request of an assignee of the claimant or a person
 19-12 subrogated to the rights of a claimant by a person other than the
 19-13 contractor or an agent, employee, or subcontractor of the
 19-14 contractor.

19-15 (b) Except as provided by this chapter [herein], this
 19-16 chapter does not limit or bar any other defense or defensive matter
 19-17 or other defensive cause of action applicable to an action to
 19-18 recover damages or other relief arising [resulting] from a
 19-19 construction defect.

19-20 SECTION 2.04. Section 27.004, Property Code, is amended to
 19-21 read as follows:

19-22 Sec. 27.004. NOTICE AND OFFER OF SETTLEMENT. (a) In a
 19-23 claim not subject to Subtitle D, Title 16, before [Before] the 60th
 19-24 day preceding the date a claimant seeking from a contractor damages
 19-25 or other relief arising from a construction defect initiates an
 19-26 action [files suit], the claimant shall give written notice by
 19-27 certified mail, return receipt requested, to the contractor, at the
 19-28 contractor's last known address, specifying in reasonable detail
 19-29 the construction defects that are the subject of the complaint. On
 19-30 the request of the contractor, the claimant shall provide to the
 19-31 contractor any evidence that depicts the nature and cause of the
 19-32 defect and the nature and extent of repairs necessary to remedy the
 19-33 defect, including expert reports, photographs, and videotapes, if
 19-34 that evidence would be discoverable under Rule 192, Texas Rules of
 19-35 Civil Procedure. During the 35-day period after the date the
 19-36 contractor receives the notice, and on the contractor's written
 19-37 request, the contractor shall be given a reasonable opportunity to
 19-38 inspect and have inspected the property that is the subject of the
 19-39 complaint to determine the nature and cause of the defect and the
 19-40 nature and extent of repairs necessary to remedy the defect. The
 19-41 contractor may take reasonable steps to document the defect. In a
 19-42 claim subject to Subtitle D, Title 16, a contractor is entitled to
 19-43 make an offer of repair in accordance with Subsection (b). A
 19-44 claimant is not required to give written notice to a contractor
 19-45 under this subsection in a claim subject to Subtitle D, Title 16.

19-46 (b) Not later than the 15th day after the date of a final,
 19-47 unappealable determination of a dispute under Subtitle D, Title 16,
 19-48 if applicable, or not later than the 45th day [Within the 45-day
 19-49 period] after the date the contractor receives the notice under
 19-50 this section, if Subtitle D, Title 16, does not apply, the
 19-51 contractor may make a written offer of settlement to the claimant.
 19-52 The offer must be sent to the claimant at the claimant's last known
 19-53 address or to the claimant's attorney by certified mail, return
 19-54 receipt requested. The offer may include either an agreement by the
 19-55 contractor to repair or to have repaired by an independent
 19-56 contractor partially or totally at the contractor's expense or at a
 19-57 reduced rate to the claimant any construction defect described in
 19-58 the notice and shall describe in reasonable detail the kind of
 19-59 repairs which will be made. The repairs shall be made not later
 19-60 than the 45th day [within the 45-day period] after the date the
 19-61 contractor receives written notice of acceptance of the settlement
 19-62 offer, unless completion is delayed by the claimant or by other
 19-63 events beyond the control of the contractor. If a contractor makes
 19-64 a written offer of settlement that the claimant considers to be
 19-65 unreasonable:

19-66 (1) on or before the 25th day after the date the
 19-67 claimant receives the offer, the claimant shall advise the
 19-68 contractor in writing and in reasonable detail of the reasons why
 19-69 the claimant considers the offer unreasonable; and

20-1 (2) not later than the 10th day after the date the
 20-2 contractor receives notice under Subdivision (1), the contractor
 20-3 may make a supplemental written offer of settlement to the claimant
 20-4 by sending the offer to the claimant or the claimant's attorney.
 20-5 ~~[For the purposes of this section, "independent contractor" means a~~
 20-6 ~~person who is independent of the contractor and did not perform any~~
 20-7 ~~of the work complained of in the claimant's notice. The claimant~~
 20-8 ~~and the contractor may agree in writing to extend the periods~~
 20-9 ~~described by this subsection.]~~

20-10 (c) If compliance with Subtitle D, Title 16, or the giving
 20-11 of the notice under Subsections (a) and (b) within the period
 20-12 prescribed by those subsections is impracticable because of the
 20-13 necessity of initiating an action [filing suit] at an earlier date
 20-14 to prevent expiration of the statute of limitations or if the
 20-15 complaint is asserted as a counterclaim, compliance with Subtitle
 20-16 D, Title 16, or the [that] notice is not required. However, the
 20-17 action [suit] or counterclaim shall specify in reasonable detail
 20-18 each construction defect that is the subject of the complaint. If
 20-19 Subtitle D, Title 16, applies to the complaint, simultaneously with
 20-20 the filing of an action by a claimant, the claimant must submit a
 20-21 request under Section 428.001. If Subtitle D, Title 16, does not
 20-22 apply, [and] the inspection provided for by Subsection (a) may be
 20-23 made not later than the 75th day after [during the 60-day period
 20-24 following] the date of service of the suit, request for
 20-25 arbitration, or counterclaim on the contractor, and the offer
 20-26 provided for by Subsection (b) may be made not later than the 15th
 20-27 day after the date the state-sponsored inspection and dispute
 20-28 resolution process is completed, if Subtitle D, Title 16, applies,
 20-29 or not later than the 60th day after [within the 60-day period
 20-30 following] the date of service, if Subtitle D, Title 16, does not
 20-31 apply. If, while an action [a suit] subject to this chapter is
 20-32 pending, the statute of limitations for the cause of action would
 20-33 have expired and it is determined that the provisions of Subsection
 20-34 (a) were not properly followed, the action [suit] shall be abated
 20-35 [for up to 75 days in order] to allow compliance with Subsections
 20-36 (a) and (b).

20-37 (d) The court or arbitration tribunal shall dismiss an
 20-38 action [abate a suit] governed by this chapter if Subsection (c)
 20-39 does not apply and the court or tribunal, after a hearing, finds
 20-40 that the contractor is entitled to dismissal [an abatement] because
 20-41 the claimant failed to comply with the requirements of Subtitle D,
 20-42 Title 16, if applicable, failed to provide the notice or failed to
 20-43 give the contractor a reasonable opportunity to inspect the
 20-44 property as required by Subsection (a), or failed to follow the
 20-45 procedures specified by Subsection (b). An action [A suit] is
 20-46 automatically dismissed [abated] without the order of the court or
 20-47 tribunal beginning on the 11th day after the date a motion to
 20-48 dismiss [plea in abatement] is filed if the motion [plea in
 20-49 abatement]:

20-50 (1) is verified and alleges that the person against
 20-51 whom the action [suit] is pending did not receive the written notice
 20-52 required by Subsection (a), the person against whom the action is
 20-53 pending [or] was not given a reasonable opportunity to inspect the
 20-54 property as required by Subsection (a), or the claimant failed to
 20-55 follow the procedures specified by Subsection (b) or Subtitle D,
 20-56 Title 16; and

20-57 (2) is not controverted by an affidavit filed by the
 20-58 claimant before the 11th day after the date on which the motion to
 20-59 dismiss [plea in abatement] is filed.

20-60 (e) ~~[An abatement under Subsection (d) continues until the~~
 20-61 ~~60th day after the date that written notice is served in compliance~~
 20-62 ~~with Subsection (a).]~~

20-63 ~~[(f)]~~ If a claimant [unreasonably] rejects a reasonable
 20-64 [an] offer made under Subsection (b) [as provided by this section]
 20-65 or does not permit the contractor or independent contractor a
 20-66 reasonable opportunity to inspect or repair the defect pursuant to
 20-67 an accepted offer of settlement, the claimant:

20-68 (1) may not recover an amount in excess of:

20-69 (A) the fair market value of the contractor's

21-1 last offer of settlement under Subsection (b) [reasonable cost of
 21-2 the offered repairs which are necessary to cure the construction
 21-3 defect and which are the responsibility of the contractor]; or

21-4 (B) the amount of a reasonable monetary
 21-5 settlement or purchase offer made under Subsection (n); and

21-6 (2) may recover only the amount of reasonable and
 21-7 necessary costs and attorney's fees as prescribed by Rule 1.04,
 21-8 Texas Disciplinary Rules of Professional Conduct, [and costs]
 21-9 incurred before the offer was rejected or considered rejected.

21-10 (f) [~~(g)~~] If a contractor fails to make a reasonable offer
 21-11 under Subsection (b) [this section], or fails to make a reasonable
 21-12 attempt to fully perform under [complete the repairs specified in]
 21-13 an accepted offer made under this section, or fails to complete, in
 21-14 a good and workmanlike manner, the repairs specified in an accepted
 21-15 offer made under this section, the limitations on damages [and
 21-16 defenses to liability] provided for in Subsection (e) [this
 21-17 section] shall not apply.

21-18 (g) [~~(h)~~] Except as provided by Subsection (e) [~~(f)~~], in an
 21-19 action [a suit] subject to this chapter the claimant may recover
 21-20 only the following economic damages proximately caused by a
 21-21 construction defect:

21-22 (1) the reasonable cost of repairs necessary to cure
 21-23 any construction defect[, including any reasonable and necessary
 21-24 engineering or consulting fees required to evaluate and cure the
 21-25 construction defect, that the contractor is responsible for
 21-26 repairing under this chapter];

21-27 (2) the reasonable and necessary cost for the
 21-28 replacement or repair of any damaged goods in the residence;

21-29 (3) reasonable and necessary engineering and
 21-30 consulting fees;

21-31 (4) the reasonable expenses of temporary housing
 21-32 reasonably necessary during the repair period;

21-33 (5) [~~(3)~~] the reduction in current market value, if
 21-34 any, after the construction defect is repaired if the construction
 21-35 defect is a [to the extent the reduction is due to] structural
 21-36 failure; and

21-37 (6) [~~(4)~~] reasonable and necessary attorney's fees.

21-38 (h) A homeowner and a contractor may agree in writing to
 21-39 extend any time period described in this chapter [(i) The total
 21-40 damages awarded in a suit subject to this chapter may not exceed the
 21-41 greater of the claimant's purchase price for the residence or the
 21-42 current fair market value of the residence without the construction
 21-43 defect].

21-44 (i) [~~(j)~~] An offer of settlement made under this section
 21-45 that is not accepted before the 25th day after the date the offer is
 21-46 received by the claimant is considered rejected.

21-47 (j) [~~(k)~~] An affidavit certifying rejection of a settlement
 21-48 offer under this section may be filed with the court or arbitration
 21-49 tribunal. The trier of fact shall determine the reasonableness of a
 21-50 final [an] offer of settlement made under this section.

21-51 (k) [~~(l)~~] A contractor who makes or provides for repairs
 21-52 under this section is entitled to take reasonable steps to document
 21-53 the repair and to have it inspected.

21-54 (l) If Subtitle D, Title 16, applies to the claim and the
 21-55 contractor's offer of repair is accepted by the claimant, the
 21-56 contractor, on completion of the repairs and at the contractor's
 21-57 expense, shall engage the third-party inspector who provided the
 21-58 recommendation regarding the construction defect involved in the
 21-59 claim to inspect the repairs and determine whether the residence,
 21-60 as repaired, complies with the applicable limited statutory
 21-61 warranty and building and performance standards adopted by the
 21-62 commission. The contractor is entitled to a reasonable period not
 21-63 to exceed 15 days to address minor cosmetic items that are necessary
 21-64 to fully complete the repairs. The determination of the
 21-65 third-party inspector of whether the repairs comply with the
 21-66 applicable limited statutory warranty and building and performance
 21-67 standards adopted by the commission establishes a rebuttable
 21-68 presumption on that issue. A party seeking to dispute, vacate, or
 21-69 overcome that presumption must establish by clear and convincing

22-1 evidence that the determination is inconsistent with the applicable
 22-2 limited statutory warranty and building and performance standards.

22-3 (m) Notwithstanding Subsections (a), (b), and (c), a
 22-4 contractor who receives written notice of a construction defect
 22-5 resulting from work performed by the contractor or an agent,
 22-6 employee, or subcontractor of the contractor and creating an
 22-7 imminent threat to the health or safety of the inhabitants of the
 22-8 residence shall take reasonable steps to cure the defect as soon as
 22-9 practicable. If the contractor fails to cure the defect in a
 22-10 reasonable time, the owner of the residence may have the defect
 22-11 cured and may recover from the contractor the reasonable cost of the
 22-12 repairs plus attorney's fees and costs in addition to any other
 22-13 damages recoverable under any law not inconsistent with the
 22-14 provisions of this chapter.

22-15 (n) This section does not preclude a contractor from making
 22-16 a monetary settlement offer or an offer to purchase the residence.

22-17 (o) A notice and response letter prescribed by this chapter
 22-18 must be sent by certified mail, return receipt requested, to the
 22-19 last known address of the recipient. If previously disclosed in
 22-20 writing that the recipient of a notice or response letter is
 22-21 represented by an attorney, the letter shall be sent to the
 22-22 recipient's attorney in accordance with Rule 21a, Texas Rules of
 22-23 Civil Procedure [The inspection and repair provisions of this
 22-24 chapter are in addition to any rights of inspection and settlement
 22-25 provided by common law or by another statute, including Section
 22-26 17.505, Business & Commerce Code].

22-27 (p) If the contractor provides written notice of a claim for
 22-28 damages arising from a construction defect to a subcontractor, the
 22-29 contractor retains all rights of contribution from the
 22-30 subcontractor if the contractor settles the claim with the
 22-31 claimant.

22-32 SECTION 2.05. Chapter 27, Property Code, is amended by
 22-33 adding Section 27.0042 to read as follows:

22-34 Sec. 27.0042. CONDITIONAL SALE TO BUILDER. (a) A written
 22-35 agreement between a contractor and a homeowner may provide that,
 22-36 except as provided by Subsection (b), if the reasonable cost of
 22-37 repairs necessary to repair a construction defect that is the
 22-38 responsibility of the contractor exceeds an agreed percentage of
 22-39 the current fair market value of the residence, as determined
 22-40 without reference to the construction defects, then, in an action
 22-41 subject to this chapter, the contractor may elect as an alternative
 22-42 to the damages specified in Section 27.004(g) that the contractor
 22-43 who sold the residence to the homeowner purchase it.

22-44 (b) A contractor may not elect to purchase the residence
 22-45 under Subsection (a) if the residence is more than five years old at
 22-46 the time an action is initiated.

22-47 (c) If a contractor elects to purchase the residence under
 22-48 Subsection (a):

22-49 (1) the contractor shall pay the original purchase
 22-50 price of the residence and closing costs incurred by the homeowner
 22-51 and the cost of transferring title to the contractor under the
 22-52 election;

22-53 (2) the homeowner may recover:

22-54 (A) reasonable and necessary attorney's and
 22-55 expert fees as identified in Section 27.004(g);

22-56 (B) reimbursement for permanent improvements the
 22-57 owner made to the residence after the date the owner purchased the
 22-58 residence from the builder; and

22-59 (C) reasonable costs to move from the residence;
 22-60 and

22-61 (3) conditioned on the payment of the purchase price,
 22-62 the homeowner shall tender a special warranty deed to the
 22-63 contractor, free of all liens and claims to liens as of the date the
 22-64 title is transferred to the contractor, and without damage caused
 22-65 by the homeowner.

22-66 (d) An offer to purchase a claimant's home that complies
 22-67 with this section is considered reasonable absent clear and
 22-68 convincing evidence to the contrary.

22-69 SECTION 2.06. Section 27.007(a), Property Code, is amended

23-1 to read as follows:

23-2 (a) A written contract subject to this chapter must contain
23-3 next to the signature lines in the contract a notice printed or
23-4 typed in 10-point boldface type or the computer equivalent that
23-5 reads substantially similar to the following:

23-6 "This contract is subject to Chapter 27 of the Texas[7]
23-7 Property Code. The provisions of that chapter may affect your right
23-8 to recover damages arising from the performance of this contract.
23-9 If you have a complaint concerning a construction defect arising
23-10 from the performance of this contract and that defect has not been
23-11 corrected through normal warranty service, you must provide the
23-12 notice required by Chapter 27 of the Texas Property Code [~~regarding~~
23-13 ~~the defect~~] to the contractor by certified mail, return receipt
23-14 requested, not later than the 60th day before the date you file suit
23-15 to recover damages in a court of law or initiate arbitration. The
23-16 notice must refer to Chapter 27 of the Texas[7] Property Code[7] and
23-17 must describe the construction defect. If requested by the
23-18 contractor, you must provide the contractor an opportunity to
23-19 inspect and cure the defect as provided by Section 27.004 of the
23-20 Texas[7] Property Code."

23-21 SECTION 2.07. (a) The changes in law made by this article
23-22 to Sections 27.002, 27.003, and 27.004, Property Code, apply only
23-23 to a cause of action that accrues on or after the effective date of
23-24 this Act. A cause of action that accrues before the effective date
23-25 of this Act is governed by the law in effect immediately before
23-26 that date, and that law is continued in effect for that purpose.

23-27 (b) Section 27.0042, Property Code, as added by this article
23-28 and the changes in law made by this article to Section 27.007(a),
23-29 Property Code, apply only with respect to a contract between a
23-30 contractor and a homeowner that is entered into on or after the
23-31 effective date of this Act. With respect to a contract that is
23-32 entered into before the effective date of this Act, the law in
23-33 effect immediately before the effective date applies, and that law
23-34 is continued in effect for that purpose.

23-35 ARTICLE 3. EFFECTIVE DATE

23-36 SECTION 3.01. This Act takes effect September 1, 2003.

23-37 * * * * *